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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 695 of 2005

APPELLANT Daulal Satnami

Vs.

RESPONDENT The State of Chhattisgarh

POST FOR JUDGMENT ON 14th AUGUST,2007

Sd/-
Dhirendra Mishra
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 695 of 2005

Appellant:	Daulal Satnami, son of Bichhala Satnami, aged 16 years, R/o village Mahali, P.S. Bodla, Distt. Kabirdham, (Kawardha)
Versus	
Respondent:	State of Chhattisgarh, through P.S. Bodla, Distt. Kabirdham, Kawardha (C.G.)

HON'BLE SHRI DHIRENDRA MISHRA, J.

Shri V. K. Pandey, Advocate for the appellant.

Shri Sandeep Yadav, Dy. Govt. Advocate for the State.

J U D G M E N T

This criminal appeal is directed against the judgment of conviction and order of sentence dated 26th July, 2005 passed in S.T. No. 26/2005 whereby learned Additional Sessions Judge, Kabirdham has convicted the appellant under Sections 450 and 376 of I.P.C. and sentenced him to undergo R.I. for two years, to pay a fine of Rs. 500/-, in default of payment of fine, to further undergo additional R.I. for 6 months and to undergo R.I. for 7 years, to pay a fine of Rs. 1000/-, and in default of payment of fine, to further undergo additional R.I. for one year.

2. The case of the prosecution in brief as reflected from F.I.R. Ex. P-1 is that the prosecutrix aged 35 years lodged a report in Police Station Borla on 9-3-2005 at about 17 hours mentioning therein that her husband is dead and she resides with her small children. Yesterday, she slept in her home with 7 years old son Nandlal in the verandah, her son Prahlad had gone on guard duty of the field of Mahesh, other children were sleeping inside the home and light of the house was on. At about 4 O'clock, she heard the sound

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of opening the door, she got up and saw that her neighbour accused Daulal entered in the verandah after opening the gate and caught hold her and threw her on the ground and forcibly raped her. She raised alarm but no one came. After committing the rape, he fled towards his house. In the morning, she narrated the incident to Mahesh Mishra, Moti Kotwar and Lalaram who advised her to lodge report and thereafter report Ex.P-1 was lodged. On the basis of the report Ex. P-1, offence under Section 376 I.P.C. was registered. During investigation the prosecutrix was sent for medical examination to Primary Health Centre, Taregaon where Dr. Durgesh Gajendra examined her and gave her report of Ex. P-18. After completing investigation, charge sheet was filed against the appellant.

3. The Charge under Sections 376 and 450 of I.P.C. were framed against the appellant by trial Court. During trial, the prosecution examined 10 witnesses. The appellant in his statement under Section 313 of Cr.P.C. denied the circumstances appearing against him in the prosecution case and stated that there is a dispute with the prosecutrix in relation to a piece of land (badi) and, therefore, he has been falsely implicated in the crime.

4. After hearing the counsel for the parties, learned trial Court has convicted and sentenced the appellant as mentioned in part 1 of the judgment.

5. Learned counsel for the appellant submits that the prosecutrix is a grown up lady and mother of 7 children. The appellant had married to Shanti Bai, sister of the prosecutrix some 10 years back, however after some time, Shanti Bai left the appellant and started living at Mungeli due to some difference with the appellant and since then relations between the accused and the prosecutrix are strained. There was also a quarrel between the appellant and the prosecutrix in relation to a piece of land (Badi). At the time of incident, the place of incident where the offence is alleged to have been committed, grown up children of the

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prosecutrix were present in the house. Therefore, the allegation of rape that too in 4 O'clock in the morning is highly improbable. There are material omissions in the statement of the prosecutrix Ex. D-1 as also in the report of Ex. P-1, however same has been over looked by the trial Court. In view of the admitted fact that there was a land related dispute between the appellant and the prosecutrix and on account of which, the prosecutrix as also the appellant had lodged the report against each other, the learned trial Court was not justified in convicting the appellant on uncorroborated testimony of the prosecutrix.

6. On the other hand, learned counsel for the State has supported the impugned judgment.

7. Conviction of the appellant is based on the statement of the prosecutrix. The prosecutrix has stated that she has 7 children, three daughters and 4 sons. The Eldest son has gone to Delhi for earning livelihood. Next to him is daughter who is already married, other 5 children reside with her. On the date of incident, she was sleeping in her home, the accused came to her house at about 4 in the morning, light of the house was on, on seeing the accused she all of a sudden woke up. The accused was having axe. He caught hold her and threw her on the ground and raped her. She resisted his attempt, however the accused fled away towards his home. In the morning she narrated the incident to Katwar Moti, Mahesh Mishra and Lalaram and thereafter went to police station and lodged report of Ex. P-1. In cross-examination, she has admitted that the house and Badi of Daulal are adjacent to her house. She has denied that her house is constructed over the land which was given on Patta to the appellant, however she has admitted that the Patta was given to brother of Daulal who has left the village and residing at Singarpur. She has denied the suggestion that after the brother of the appellant left, Daulal came into possession of that land. She has denied that they fight at the time of fencing,

however she has stated that the accused fights. She has also admitted that a quarrel had ensued between her and the appellant and his son whereupon she lodged a report against the appellant as the appellant had broken her three teeth and on that day Daulal and his son had also lodged report to the effect that that the prosecutrix had committed marpeet and bitten. She has denied the suggestion that Shobhit Satnami lives in her house and there was a quarrel on the previous night between the two in the name of Shobhit Satnami. She has also denied that Shanti, her sister had *Chudi* married Daulal and she resided with him for a period of six months. She has admitted in para 12 that she has a dispute with Daulal from the day she has constructed the house. She has stated that Daulal wants to remove her from the house. In para 13 of her statement, she has claimed that while lodging the report of Ex. P-1 and giving statement of Ex. D-1, she had told the police that the accused came to her house with axe and she had resisted the attempt of the accused and had caught hold of his hair, however she cannot tell as to why this fact is not mentioned in Ex. P-1 or in Ex. D-1. She has also admitted that at the time of incident, three children aged about 10 to 12 years were present inside the house, however she has claimed that she raised alarm but nobody came. She has claimed that because of the incident she had sustained injuries on her leg and hand.

8. P.W. 1 Mahesh Mishra has stated that on the date of incident at about 7 a.m. while he was going towards the tank, he met the prosecutrix near the house of Kotwar who was coming out of the house shouting, on being asked, she said that the accused raped her at 4 O'clock in the night whereupon he suggested her to lodge report. In the cross-examination, this witness has also admitted that there is old dispute between the prosecutrix and the accused in relation to a piece of land (Badi). He has also admitted that Shanti Bai, sister of the appellant was married to Daulal. P.W. 3 Motiram has been declared hostile. This witness has

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stated that the prosecutrix met him in the morning and told that Daulal was again quarreling with her and she is lodging report against him whereupon he advised her not to lodge report. He has also denied that the prosecutrix had complained that Daulal committed rape upon her. In the cross-examination by the Public Prosecutor, he has denied his diary statement of Ex. P-5 that the prosecutrix told that she was raped by the accused.

9. The only question for deciding this appeal is whether the learned trial Court was justified in convicting the appellant by placing reliance upon the statement of the prosecutrix.

10. From the evidence available on record, it is not in dispute that the relation between the prosecutrix and the accused was bitter, they were engaged in physical scuffle earlier also, as a result of which both the parties had lodged report in the police station 8-9 months before the date of incident. It is also not in dispute that there is a dispute between the two in relation to the possession of the land over which the prosecutrix is residing after constructing the house. The statement of the prosecutrix is to be examined in the background of this admitted fact as she has every reason to implicate the accused in a false case of rape. If we scrutinize the evidence of the prosecutrix in the light of the other evidence available on record, it is very difficult to place implicit reliance upon the testimony of the prosecutrix for convicting the appellant in the offence under Sections 450 and 376 of I.P.C. because (a) the prosecutrix had admitted that while she was sleeping in the verandah with 6-7 years old son, the other sons children aged between 10 to 12 years were present inside the house, (b) she stated she had struggled and raised alarm however, no one came to the place of incident including her own sons who are admittedly present in side the house, (c) she has claimed that she was thrown on the ground and she had made all efforts to resist the

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accused but from the medical evidence of the prosecutrix except minor abrasions over right leg, no other injury has been found over her hand as claimed by her, (d) the prosecution has also not adduced any evidence to show that the accused had sustained any injury during the incident. She has stated for the first time before the Court that the accused was carrying axe. If that be so, there was no reason for this material omission in her promptly lodged F.I.R. or diary statement. She is not a witness of truth as she has denied even the marriage of her sister Shanti Bai with the appellant though this fact has been admitted by P.W. 1 Mahesh. P.W. 3 Moti, Kotwar of the village who has been named in the F.I.R. has also not supported the case of the prosecution and who has stated that the prosecutrix had only complained that the accused Daulal had quarreled with her.

11. For the aforesaid reason, in the considered opinion of this Court, it would not be safe to convict and sentence the appellant solely on the basis of the testimony of the prosecutrix and the possibility cannot be ruled out that because of the land related animosity, she has implicated the accused in the offence of rape.

12. In the result, the appeal is allowed. The judgment of the trial Court convicting and sentencing the appellant for offence under Sections 450 and 376 of I.P.C. is set aside. The appellant is acquitted of the above charges. He be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge